

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 CARL J. KUNASEK

4 Chairman

JIM IRVIN

Commissioner

5 WILLIAM A. MUNDELL

Commissioner

6
7 In the matter of)

DOCKET NO. S-03360A-00-0000

8 ETHICO MEDICAL MANAGEMENT,)

an Arizona company)

9 8607 North 59th Avenue, Suite B-3)

Glendale, Arizona 85032)

10 JANE B. LEWIS)

11 14964 West Bottle Tree Circle)

Surprise, Arizona 85374)

12 KIMBERLY B. McMAHAN)

13 17374 North 89th Avenue, #1002)

Peoria, Arizona 85382)

14 Respondents.)

15
16 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

17 For its proposed order for relief, the Securities Division (the "Division") of the Arizona Corporation
18 Commission (the "Commission") alleges that Respondents ETHICO MEDICAL MANAGEMENT, JANE
19 B. LEWIS, and KIMBERLY B. McMAHAN, singularly and in concert, have engaged in acts, practices and
20 transactions which constitute violations of A.R.S. § 44-1801 *et seq.*, the Securities Act of Arizona.

21 The Division alleges as follows:

22 **I.**

23 **JURISDICTION**

24 1. The Commission has jurisdiction over these matters pursuant to Article XV of the Arizona
25 Constitution and the Securities Act of Arizona.
26

II.

RESPONDENTS

2. ETHICO MEDICAL MANAGEMENT ("ETHICO"), whose last known address was 8607 North 59th Avenue, Suite B-3, Glendale, Arizona, 85032, was an Arizona company involved in the business of medical billing and administration.

3. JANE B. LEWIS ("LEWIS"), whose last known address was 14964 West Bottle Tree Circle, Surprise, Arizona, 85734, was a co-owner and a principal officer of ETHICO.

4. KIMBERLY B. McMAHAN ("McMAHAN"), whose last known address was 17374 North 89th Avenue, Suite #1002, Peoria, Arizona, 85382, was a co-owner and a principal officer of ETHICO.

5. Respondents ETHICO, LEWIS, and McMAHAN may collectively be referred to as "RESPONDENTS."

III.

FACTS

6. Each of the preceding paragraphs is incorporated by reference.

7. On or about September 6, 1996, LEWIS and McMAHAN began a campaign of soliciting investment funds to support their fledgling medical management company, ETHICO. In doing so, RESPONDENTS offered and sold securities within or from Arizona, in the form of promissory notes, to at least four individuals on repeated occasions. RESPONDENTS raised at least \$42,500 through the offer and sale of these promissory notes, but subsequently failed to make the scheduled repayments on the notes.

8. For several years prior to their ETHICO venture, LEWIS (CRD #2159156) and McMAHAN (CRD #2313735) served as registered salesmen with PFS Investments, Inc. ("PFS") in Phoenix, Arizona.

...

...

9. Some time in 1995, while still serving as PFS salesmen, LEWIS, McMAHAN and a colleague created ETHICO, a start-up company focusing on the business of medical billing and administration.

1 LEWIS and McMAHAN were named as officers and co-owners of the company.

2 10. The following year, in August of 1996, McMAHAN resigned from PFS, but she immediately
3 accepted another position with SunAmerica Securities where she remained employed until the fall of 1998.
4 LEWIS terminated her salesman position with PFS on October 1, 1996.

5 11. Shortly following the resignations of McMAHAN and LEWIS from PFS, RESPONDENTS
6 sold an ETHICO investment, in the form of a \$2,500 promissory note, to a Phoenix area investor. This
7 investor was acquainted with McMAHAN through prior client/salesman dealings.

8 12. Like many of the subsequent promissory notes sold by RESPONDENTS, this \$2,500 note
9 was signed by LEWIS and McMAHAN in their individual capacities.

10 13. McMAHAN told this investor that his investment with ETHICO would be re-invested and
11 would subsequently be used as collateral to acquire further business loans for ETHICO. McMAHAN never
12 informed the investor where his money was ultimately going to be invested.

13 14. The only documentation ever provided to the investor prior to his investment with ETHICO
14 was a tri-fold brochure outlining the business strategies of ETHICO.

15 15. RESPONDENTS failed to disclosure any risks associated with the ETHICO investment,
16 either before or at the time of the investment, and RESPONDENTS made no mention as to the limitations on
17 the transferability of such an investment.

18 16. Some time after remitting an investment check payable to LEWIS for \$2,500, the investor
19 received a promissory note purporting to pay 20% interest per annum.

20 17. The investor subsequently asked McMAHAN on several occasions whether his ETHICO
21 investments were safe. Each time, McMAHAN responded that his funds had been invested and were fully
22 secure.

23 . . .

24 . . .

25 18. The investor did not receive the interest payments when due as prescribed under the note.
26 Instead, RESPONDENTS asked that the investor invest another \$2,500 with ETHICO and to roll his initial

1 note into a second superceding note.

2 19. The investor agreed to do so, and the investor made another \$2,500 ETHICO investment
3 payable to LEWIS and ETHICO on May 5, 1997. The investor subsequently received a superceding
4 promissory note for \$5,000 on July 7, 1997. This second note was scheduled to once again pay interest at
5 20% interest per annum and to fully mature in May of 1999.

6 20. After further solicitation, the investor agreed to make yet another investment with ETHICO
7 the following month. On June 1, 1997, the investor invested another \$7,500 with ETHICO, making out a
8 third check for \$7,500 payable to LEWIS. The investor received another promissory note for the additional
9 investment paying 10% interest per annum with a maturity date in December of 1997.

10 21. The investor failed to receive any payments, either in interest or in principal, on any of the
11 outstanding notes.

12 22. RESPONDENTS solicited the investor to invest another \$17,500 with ETHICO in February
13 of 1998. The investor agreed, and under McMAHAN'S instruction, the investor withdrew \$17,500 from his
14 IRA account and invested the funds with ETHICO. Unknown to the investor at the time, the investor incurred
15 a tax penalty for undertaking this particular withdrawal from his IRA account.

16 23. After receiving this \$17,500 investment, RESPONDENTS drew up a fourth promissory note
17 for the investor which combined and superceded all prior notes. Under this final \$30,000 note, the investor
18 was scheduled to receive \$1,000 per month for 54 months starting on July 1, 1999 and ending on January 1,
19 2004. The investor was also guaranteed 5% of the annual profits of ETHICO starting in 2005.

20 24. The investor has subsequently received no payments on the note, either in interest or in
21 principal.

22 25. RESPONDENTS engaged in a similar pattern of selling promissory notes to two other
23 investors during a period starting in December of 1996.

24 . . .

25 26. RESPONDENTS failed to provide either of these additional investors with any information
26 describing the business operations or financial condition of ETHICO prior to or at the time of their investments

1 in ETHICO.

2 27. Additionally, RESPONDENTS failed to disclosure to these investors any of the risks
3 associated with their ETHICO investments. To one such investor, McMAHAN actually guaranteed an annual
4 return of 12 per cent.

5 28. One of these latter investors first learned of the ETHICO investment opportunity from an
6 acquaintance who had previously invested with ETHICO. RESPONDENTS solicited a \$5,000 investment
7 from this investor on December 10, 1996, and the investor subsequently received a promissory note from
8 RESPONDENTS for \$5,000. After RESPONDENTS requested another \$5,000 investment from the
9 investor, the original note was rolled into a second \$10,000 promissory note on April 1, 1997. Under the
10 terms of this superceding note, the investor was to receive 20% interest per annum beginning in July 1997,
11 with the note maturing in May of 1999.

12 29. This investor eventually received only two interest payments on the note. The remainder of
13 the interest and the principal was not paid when due.

14 30. RESPONDENTS solicited the second of these latter investors to invest in ETHICO in
15 January of 1997. This investor subsequently invested \$1,000 with the company, and shortly thereafter
16 received a promissory note from RESPONDENTS for \$1,000. As before, this note was rolled into a new
17 superceding note for \$2,500 after RESPONDENTS requested another \$1,500 investment from the investor.
18 Under the resulting superceding note, this investor was to receive 20% interest per annum on her investment
19 starting in July of 1997.

20 31. This investor received only one interest payment on her promissory note, and the principal
21 investment was never repaid.

22 32. While raising funds for ETHICO, RESPONDENTS failed to inform any of the investors that
23 the promissory notes were not registered as securities in the state of Arizona and were not exempt from
24 registration. RESPONDENTS also failed to mention that neither ETHICO nor LEWIS was registered as a
25 dealer and/or salesman at the time the ETHICO securities were sold.

26 33. RESPONDENTS also failed to disclose to investors that while they were selling ETHICO

1 securities, the company was experiencing a number of financial difficulties, including but not limited to the
2 failure to meet ongoing payment obligations.

3 34. In March of 1999, LEWIS notified investors that she was preparing to file bankruptcy, and
4 indicated that the notes would not be repaid.

5 **IV.**

6 **VIOLATION OF A.R.S. § 44-1841**

7 **(Offer and Sale of Unregistered / Unauthorized Securities)**

8 35. Each of the preceding paragraphs is incorporated by reference.

9 36. From approximately September of 1996, RESPONDENTS offered and/or sold securities, in
10 the form of promissory notes, within or from Arizona.

11 37. The securities referred to above were not registered under A.R.S. §§ 44-1871 through 44-
12 1875, or 44-1891 through 44-1902; were not securities for which a notice filing has been made under A.R.S.
13 § 44-3321; were not exempt under A.R.S. §§ 44-1843 or 44-1843.01; were not offered or sold in exempt
14 transactions under A.R.S. § 44-1844; and were not exempt under any rule or order promulgated by the
15 Commission.

16 38. This conduct violates A.R.S. § 44-1841.

17 **V.**

18 **VIOLATION OF A.R.S. § 44-1842**

19 **(Transactions by Unregistered Dealers and Salesmen)**

20 39. Each of the preceding paragraphs is incorporated by reference.

21 40. In connection with the offers to sell and the sale of securities, ETHICO and LEWIS acted as
22 dealers and/or salesmen within or from Arizona, although not registered pursuant to the provisions of Article 9
23 of the Securities Act.

24 41. This conduct violates A.R.S. § 44-1842.

25 **VI.**

26 **VIOLATION OF A.R.S. § 44-1991**

(Fraud in Connection with the Offer and Sale of Securities)

42. Each of the preceding paragraphs is incorporated by reference.

43. In connection with the offers and sales of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (ii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

- a) RESPONDENTS failed to disclose to investors the manner of use of their investment funds;
- b) RESPONDENTS failed to disclose to investors the risks associated with their repeated investments with ETHICO;
- c) RESPONDENTS failed to disclose to investors information relating to the company's operational plans, business affairs and financial condition;
- d) RESPONDENTS failed to inform investors that the promissory notes were not registered as securities in Arizona and were not exempt from registration, and that neither LEWIS nor ETHICO was registered as a dealer and/or salesman in Arizona; and
- e) RESPONDENTS failed to inform investors that ETHICO was experiencing financial difficulties at the time they were offering and selling investments in the company;

44. This conduct violates A.R.S. § 44-1991.

...

...

...

...

VII.**REQUESTED RELIEF**

The Division requests that the Commission grant the following relief against each respondent:

as early as possible to allow time to arrange the accommodation.

Dated this _____ day of June, 2000

Mark Sendrow
Director of Securities